

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
JOSE HERNANDEZ-SIERRA,)
)
Defendant.)

8:04CR486

ORDER

This matter is before the court on the government's MOTION TO CONTINUE (#23). This case was originally set to be tried on February 1, 2005. Defendant was given a continuance to March 15, 2005, based on prior defense counsel's representation that more time was needed to evaluate a plea agreement. On the eve of trial, prior counsel requested and received a continuance to August 30, 2005, to pursue defendant's claim of citizenship based on derivative status. On the eve of the August 30 trial, prior counsel requested and received a continuance to December 6, 2005 for the same reason. The order granting that continuance stated, "I will not grant any further continuances based on the pending application for naturalization." Substitute defense counsel was appointed and entered an appearance on August 5, 2005. The court file shows no substantive activity in this case file since August 5, 2005.

The government now seeks a continuance because defendant's application for Certificate of Citizenship, which was not even mailed to the Bureau of Immigration and Citizenship Services until October 19, 2005, is still pending.

Because the defendant has apparently been detained for nearly one year, has not requested this continuance, and has not filed any waiver of speedy trial,

IT IS ORDERED that the government's MOTION TO CONTINUE (#23) is denied.

Pursuant to NECrimR 57.2, a party may appeal this order by filing a "Statement of Appeal of Magistrate Judge's Order" within ten (10) days after being served with the order. The party shall specifically state the order or portion thereof appealed from and the basis of the appeal. The appealing party shall file contemporaneously with the statement of appeal a brief setting forth the party's arguments that the magistrate judge's order is clearly erroneous or contrary to law. The filing of a statement of appeal does not automatically stay the magistrate judge's order pending appeal. See NECrimR 57.2(d).

DATED November 28, 2005.

BY THE COURT:

**s/ F.A. Gossett
United States Magistrate Judge**